

City of San José, California
Norman Y. Mineta San José International Airport
Subordinated Commercial Paper Notes
Series A-1a (Non-AMT) through Series A-4a (Non-AMT)
Series A-1b (Non-AMT/Private Activity) through Series A-4b (Non-AMT/Private Activity)
Series B-1 (AMT) through Series B-4 (AMT)
Series C-1 (Taxable) through Series C-3 (Taxable)

THIRD AMENDED AND RESTATED DEALER AGREEMENT

January 13, 2011

City of San José
200 East Santa Clara Street
San Jose, California 95113

Ladies and Gentlemen:

THIS THIRD AMENDED AND RESTATED DEALER AGREEMENT (this “*Dealer Agreement*”) amends and restates the Second Amended and Restated Dealer Agreement, dated September 17, 2009, between the City of San José (the “*Issuer*”) and Morgan Stanley & Co. Incorporated, as dealer (“*Morgan Stanley*” or the “*Dealer*”), and confirms the agreement between the undersigned, Morgan Stanley, as dealer, and the Issuer, for the Dealer to act as a dealer in connection with the issuance, from time to time, of the Issuer’s: (a) San José International Airport Subordinated Commercial Paper Notes, Series A-1a (Non-AMT) (the “*Series A-1a Notes*”), Series A-2a (Non-AMT) (the “*Series A-2a Notes*”), Series A-3a (Non-AMT) (the “*Series A-3a Notes*”), and Series A-4a (Non-AMT) (the “*Series A-4a Notes*,” and collectively with the Series A-1a Notes, the Series A-2a Notes and the Series A-3a Notes, the “*Series A-1 Notes*”); (b) San José International Airport Subordinated Commercial Paper Notes Series A-1b (Non-AMT/Private Activity) (the “*Series A-1b Notes*”), Series A-2b (Non-AMT/Private Activity) (the “*Series A-2b Notes*”), Series A-3b (Non-AMT/Private Activity) (the “*Series A-3b Notes*”), and Series A-4b (Non-AMT/Private Activity) (the “*Series A-4b Notes*,” and collectively with the Series A-1b Notes, the Series A-2b Notes and the Series A-3b Notes, the “*Series A-2 Notes*”); (c) San José International Airport Subordinated Commercial Paper Notes Series B-1 (AMT) (the “*Series B-1 Notes*”), Series B-2 (AMT) (the “*Series B-2 Notes*”), Series B-3 (AMT) (the “*Series B-3 Notes*”), and Series B-4 (AMT) (the “*Series B-4 Notes*,” and collectively with the Series B-1 Notes, the Series B-2 Notes and the Series B-3 Notes, the “*Series B Notes*”); and (d) San José International Airport Subordinated Commercial Paper Notes Series C-1 (Taxable) (the “*Series C-1 Notes*”), Series C-2 (Taxable) (the “*Series C-2 Notes*”), and Series C-3 (Taxable) (the “*Series C-3 Notes*,” and collectively with the Series C-1 Notes and the Series C-2 Notes, the “*Series C Notes*”). The Series A-1 Notes, the Series A-2 Notes, the Series B Notes and the Series C Notes are collectively referred to herein as the “*Notes*.”

4834-2442-9320.2

Council Agenda: 1-11-11

Item No.: 3.2 (b)

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.

The Notes are to be issued, from time to time, under and pursuant to (a) Resolution No. [____], adopted by the City Council of the Issuer (the “**City Council**”) on January 11, 2011 (the “**Authorizing Resolution**”), (b) Resolution No. 57794, adopted by the City Council on October 2, 1984, as amended and restated in the form of the Master Trust Agreement, dated as of July 1, 2001, as amended and supplemented (collectively, the “**Master Trust Agreement**”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A. (as successor to BNY Western Trust Company), as trustee (the “**Trustee**”), and (c) the Second Amended and Restated Issuing and Paying Agent Agreement, dated as of January 1, 2011 (the “**Issuing and Paying Agent Agreement**”), between the Issuer and Deutsche Bank Trust Company Americas, as issuing and paying agent (the “**Issuing and Paying Agent**”). All capitalized terms used herein and not defined herein shall have the meanings specified in the Issuing and Paying Agent Agreement.

The Notes are to be issued for the purposes described in the Authorizing Resolution and the Issuing and Paying Agent Agreement. The aggregate principal amount of the Notes that may be outstanding at any one time and the aggregate amount of interest to maturity with respect to such Notes are limited as provided in the Authorizing Resolution and the Issuing and Paying Agent Agreement. The holders from time-to-time of the Series A-1a Notes, the Series A-1b Notes, the Series B-1 Notes and the Series C-1 Notes will be entitled to the benefits of an irrevocable letter of credit (the “**JPMorgan Letter of Credit**”) issued by JPMorgan Chase Bank, National Association (“**JPMorgan**”), pursuant to the Letter of Credit and Reimbursement Agreement, dated as of January 1, 2011 (the “**JPMorgan Reimbursement Agreement**”), between the Issuer and JPMorgan. The holders from time-to-time of the Series A-2a Notes, the Series A-2b Notes, the Series B-2 Notes and the Series C-2 Notes will be entitled to the benefits of an irrevocable letter of credit (the “**Bank of America Letter of Credit**”) issued by Bank of America, N.A. (“**Bank of America**”), pursuant to the Letter of Credit and Reimbursement Agreement, dated as of January 1, 2011 (the “**Bank of America Reimbursement Agreement**”), between the Issuer and Bank of America. The holders from time-to-time of the Series A-3a Notes, the Series A-3b Notes, the Series B-3 Notes and the Series C-3 Notes will be entitled to the benefits of an irrevocable letter of credit (the “**Wells Fargo Letter of Credit**”) issued by Wells Fargo Bank National Association (“**Wells Fargo**”), pursuant to the Letter of Credit and Reimbursement Agreement, dated as of January 1, 2011 (the “**Wells Fargo Reimbursement Agreement**”), between the Issuer and Wells Fargo. The holders from time-to-time of the Series A-4a Notes, the Series A-4b Notes, and the Series B-4 Notes will be entitled to the benefits of an irrevocable letter of credit (the “**Citibank Letter of Credit**”) issued by Citibank, N.A. (“**Citibank**”), pursuant to the Letter of Credit Reimbursement Agreement, dated as of January 1, 2011 (the “**Citibank Reimbursement Agreement**”), between the Issuer and Citibank.

JPMorgan, Bank of America, Wells Fargo and Citibank shall be collectively referred to herein as the “**Banks.**” The JPMorgan Letter of Credit, the Bank of America Letter of Credit, the Wells Fargo Letter of Credit and the Citibank Letter of Credit shall be collectively referred to herein as the “**Letters of Credit.**” The JPMorgan Reimbursement Agreement, the Bank of America Reimbursement Agreement, the Wells Fargo Reimbursement Agreement and the Citibank Reimbursement Agreement shall be collectively referred to herein as the “**Reimbursement Agreements.**”

Section 1. Appointment of Dealer; Basic Responsibilities of Dealer.

(a) Subject to the terms and conditions contained herein, the Issuer hereby appoints the Dealer, and the Dealer hereby accepts such appointment, as a dealer for the Issuer in connection with the offering and sale of the Notes, from time to time. The Dealer hereby acknowledges that the Issuer has entered and may in the future, from time to time, enter, into agreements with other dealers in connection with the offering and sale of the Notes on behalf of the Issuer.

(b) In its capacity as dealer, the Dealer shall exercise its best efforts to solicit purchases of the Notes, on such terms and conditions, including maturity dates and interest rates, as may prevail from time-to-time in the tax-exempt and taxable commercial paper markets, up to the maximum interest rate, if any, specified in the Issuing and Paying Agent Agreement and without regard to whether the Bank Rate (as defined in each respective Reimbursement Agreement) is less than the interest rate to be borne on the applicable Notes. On or before 12:30 p.m., New York City time, on each day on which Notes, the purchase of which has been solicited by the Dealer, are to be issued, the Dealer will notify an Authorized Representative and the Issuing and Paying Agent of the amounts and terms and conditions of such Notes with respect to which the Dealer has received indications of interest from potential purchasers. Such amounts and terms and conditions shall be subject to the approval of an Authorized Representative. The receipt by the Dealer of such indications of interest from potential purchasers of Notes shall not constitute legal and binding commitments of such purchasers, and the giving by the Dealer of notice of such indications of interest from potential purchasers of Notes pursuant to this paragraph shall not constitute, or be construed as constituting, notice of the receipt by the Dealer of legal and binding commitments of such purchasers.

(c) It is understood and agreed that the Dealer's responsibilities hereunder will include (i) the soliciting of purchases of Notes from investors that customarily purchase tax-exempt or taxable commercial paper or securities in large denominations; (ii) effecting and processing such purchases; (iii) causing the furnishing, by mail or otherwise (at the Issuer's expense), of such materials as are described in Section 3 hereof; (iv) billing and receiving payment for Note purchases; and (v) performing such other related functions as may be requested by the Issuer and agreed to by the Dealer.

(d) The Dealer agrees that it will stop soliciting purchases of Series A-1a Notes, Series A-1b Notes, Series B-1 Notes and Series C-1 Notes upon receipt of a notice from JPMorgan of a Stop Order pursuant to Section 9.2(b) of the JPMorgan Reimbursement Agreement.

(e) The Dealer agrees that it will stop soliciting purchases of A-2a Notes, Series A-2b Notes, Series B-2 Notes and Series C-2 Notes upon receipt of a notice from Bank of America of a Stop Order pursuant to Section 9.2(b) of the Bank of America Reimbursement Agreement.

(f) The Dealer agrees that it will stop soliciting purchases of A-3a Notes, Series A-3b Notes, Series B-3 Notes and Series C-3 Notes upon receipt of a notice from Wells Fargo of a Stop Order pursuant to Section 9.2(b) of the Wells Fargo Reimbursement Agreement.

(g) The Dealer agrees that it will stop soliciting purchases of A-4a Notes, Series A-4b Notes and Series B-4 Notes upon receipt of a notice from Citibank of a Stop Order pursuant to Section 7.02(a) of the Citibank Reimbursement Agreement.

Section 2. The Notes. As more fully described in the Issuing and Paying Agent Agreement, the Notes will be issuable in minimum denominations of \$100,000 and integrals of \$1,000 in excess of such amount and will have maturities of not more than 270 days from their respective dates of execution and delivery (but in no event later than one (1) Business Day prior to the Letter of Credit Expiration Date of the applicable Letter of Credit issued with respect to the applicable Notes). The Notes may be executed and delivered in registered form, without coupons, or bearer form. The Notes will be issued as interest-bearing obligations (or at a discount with respect to the Series C Notes), maturing at such times as an approving officer may designate upon authorizing the issuance thereof. Principal of and interest with respect to the Notes will be payable at maturity in immediately available funds at the offices of the Issuing and Paying Agent in the City of New York, New York.

Section 3. Furnishing of Memorandum.

(a) The Issuer has cooperated with the Dealer in the preparation of the Commercial Paper Offering Memorandum, dated January 10, 2011, pertaining to the Notes. Such Commercial Paper Offering Memorandum, including the cover page and all summary statements, appendices and other materials included or incorporated therein by reference or attached thereto or accompanying therewith, as it may be amended or supplemented from time-to-time by a Supplement (as hereinafter defined) or Supplements, is hereinafter referred to as the “*Offering Memorandum (2011)*.” The Dealer will furnish the Offering Memorandum (2011) to each offeree of the Notes at or prior to the date on which such offeree is first offered the Notes.

(b) The Issuer agrees to cooperate with the Dealer in the preparation, from time to time (but no greater than once each Fiscal Year, unless determined otherwise by the Issuer and the Dealer), of an update to the Offering Memorandum (2011) (or the Annual Offering Memorandum (as hereinafter defined), as the case may be) in the event the Dealer determines that the preparation and distribution of such updated Offering Memorandum (2011) or Annual Offering Memorandum is necessary or desirable in connection with the offering and sale of the Notes. Such updated memorandum, including the cover page and all summary statements, appendices and other materials included or incorporated therein by reference or attached thereto or accompanying therewith as it may be amended or supplemented from time-to-time by a Supplement or Supplements, is hereinafter referred to as an “*Annual Offering Memorandum*.” The

Dealer will furnish each Annual Offering Memorandum to each offeree of Notes offered subsequent to the receipt by the Dealer of such Annual Offering Memorandum.

(c) Each Annual Offering Memorandum shall be revised in the same manner and within the same period as is provided in paragraph (b) of this Section with respect to the Offering Memorandum (2011). The most current Annual Offering Memorandum (or the Offering Memorandum (2011) if no subsequent Annual Offering Memorandum has been delivered to the Dealer) is hereinafter referred to as the “**Memorandum**.”

(d) If, during and prior to such time as any Memorandum is used in connection with the offering and sale of the Notes, any event or condition known to the Issuer relating to or affecting the Issuer shall occur which might materially adversely affect the properties, business, condition (financial or other) or results of operations of the Issuer or the ability of the Issuer to perform its obligations under and in respect of this Dealer Agreement, the Notes, the Master Trust Agreement, the Issuing and Paying Agent Agreement or the Reimbursement Agreements, or which might affect the correctness of any statement of a material fact contained in such Memorandum, the Issuer will promptly notify the Dealer of the circumstances and details of such event or condition. If, as a result of such event or condition or any other event or condition, it is necessary or advisable, in the opinion of the Dealer, to amend or supplement such Memorandum in light of such event or condition, the Issuer will forthwith cooperate with the Dealer in the prompt preparation of a supplement to such Memorandum (a “**Supplement**”), in form and substance satisfactory to the Dealer, which will so amend or supplement such Memorandum.

(e) Simultaneously with the furnishing thereof to the Banks, the Issuer shall furnish to the Dealer all financial statements, reports and information required to be furnished to the Banks pursuant to Section 7.2 of the JPMorgan Reimbursement Agreement, Section 7.2 of the Bank of America Reimbursement Agreement, Section 7.2 of the Wells Fargo Reimbursement Agreement, and Section 5.02 of the Citibank Reimbursement Agreement.

(f) The information relating to the Issuer requested by the Dealer, and to be provided by the Issuer, for inclusion in the Memorandum or any Supplement, from time to time, shall be limited to information reasonably available to the Issuer.

(g) The information with respect to the Issuer and Norman Y. Mineta San José International Airport (the “**Airport**”) provided or approved by the Issuer contained in each Memorandum or any Supplement will be true and correct in all material respects on and as of the respective dates of such Memorandum or Supplement.

(h) The Issuer agrees to pay (or cause to be paid) the reasonable costs and expenses of the Dealer (including, but limited to, the costs and expenses of the Dealer’s counsel) in connection with the preparation of the Offering Memorandum (2011), each

Annual Offering Memorandum, each Supplement and other material approved by the Issuer for use in connection with the offering of the Notes.

(i) The Dealer shall not include any material or reference relating to any of the Banks or any financial information relating to the Banks in the Offering Memorandum (2011), any Annual Offering Memorandum or Supplement without the prior written approval of the applicable Bank.

Section 4. Conditions to Dealer's Obligations. The obligations of the Dealer under this Dealer Agreement have been undertaken in reliance on, and shall be subject to, the due performance by the Issuer of its obligations and agreements to be performed hereunder and to the accuracy of and compliance with the respective representations, warranties, covenants and agreements of the Issuer contained herein, in each case on and as of the date of delivery of this Dealer Agreement and on and as of each date on which the Notes are to be issued. The obligations of the Dealer hereunder with respect to each date on which the Notes are to be issued are also subject, in the discretion of the Dealer, to the following further conditions precedent:

(a) The Authorizing Resolution, the Master Trust Agreement, the Issuing and Paying Agent Agreement, the Letters of Credit and the Reimbursement Agreements shall be in full force and effect and the Notes to be issued on such date shall have the full benefits of all of the foregoing, all of which shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Dealer, and there shall be in full force and effect such additional resolutions, agreements, instruments and certificates (including such certificates as may be required by Bond Counsel regarding the exclusion from gross income of interest on the Series A-1 Notes, the Series A-2 Notes and the Series B Notes from federal income tax) and such opinions of counsel, which resolutions, agreements, certificates and opinions of counsel shall be satisfactory in form and substance to Bond Counsel and there shall have been taken in connection therewith and in connection with the issuance of the Notes all such action as shall, in the opinion of the aforesaid Bond Counsel, be necessary in connection with the transactions contemplated hereby.

(b) There shall have been no material adverse change in the properties, business, condition (financial or other) or results of operations of the Airport or the Banks since the date of the Memorandum; and no Event of Default (as such term is defined in the Issuing and Paying Agent Agreement or the respective Reimbursement Agreements) shall have occurred and be continuing and no event shall have occurred and be continuing which with the passage of time or giving of notice or both, would constitute such an Event of Default.

(c) On the date hereof, the Dealer shall have received (unless otherwise agreed to by the Dealer):

(i) certified copies of Resolution No. [____], adopted by the City Council on January 11, 2011 ("**Resolution No. [____]**") and Resolution No.

[____], adopted by the City Council on January 11, 2011 (“**Resolution No. [____]**”);

(ii) executed copies of the Issuing and Paying Agent Agreement, the Reimbursement Agreements and the Letters of Credit; and a transcript of all proceedings relating to the authorization of the Notes certified by a duly authorized official of the Issuer;

(iii) a copy of the opinion of Bond Counsel, dated January 13, 2011, with respect to the treatment of interest on the Notes for federal and state tax purposes, together with a letter or letters of such counsel, dated as of the date hereof, to the effect that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(iv) a copy of the opinion(s) of Chapman and Cutler LLP, counsel to JPMorgan, dated January 13, 2011, with respect to the JPMorgan Reimbursement Agreement and the JPMorgan Letter of Credit, together with a letter or letters of such counsel, dated as of the date hereof, to the effect that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(v) a copy of the opinion(s) of Chapman and Cutler LLP, counsel to Bank of America, dated January 13, 2011, with respect to the Bank of America Reimbursement Agreement and the Bank of America Letter of Credit, together with a letter or letters of such counsel, dated as of the date hereof, to the effect that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(vi) a copy of the opinion(s) of Chapman and Cutler LLP, counsel to Wells Fargo, dated January 13, 2011, with respect to the Wells Fargo Reimbursement Agreement and the Wells Fargo Letter of Credit, together with a letter or letters of such counsel, dated as of the date hereof, to the effect that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(vii) a copy of the opinion(s) of Kutak Rock LLP, counsel to Citibank, dated January 13, 2011, with respect to the Citibank Reimbursement Agreement and the Citibank Letter of Credit, together with a letter or letters of such counsel, dated as of the date hereof, to the effect that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(viii) a copy of the opinion(s) of the City Attorney, with respect to the adoption of Resolution No. [____] and Resolution No. [____], and the execution, delivery and enforceability of the Issuing and Paying Agent Agreement, the Reimbursement Agreements and this Dealer Agreement, together with a letter or letters of such counsel, dated as of the date hereof, to the effect

that the legal conclusions expressed in the foregoing opinion may be relied upon by the Dealer;

(ix) a certificate of the Issuer, executed by any duly authorized official of the Issuer, dated as of the date hereof, as to the accuracy of and compliance with the representations, warranties, covenants and agreements of the Issuer contained in the Master Trust Agreement and the Issuing and Paying Agent Agreement on and as of the date hereof, which certificate may state that the certifications therein set forth are to the best knowledge and belief of such official;

(x) a certificate of the Issuer, executed by any duly authorized official of the Issuer, dated as of the date hereof, as to the accuracy of and compliance with the representations, warranties, covenants and agreements of the Issuer contained in the Reimbursement Agreements on and as of the date hereof, which certificate may state that the certifications therein set forth are to the best knowledge and belief of such official;

(xi) a certificate of the Issuer executed by any duly authorized official of the Issuer, dated as of the date of the Offering Memorandum (2011), as to the correctness of information concerning the Issuer and the Airport which is contained in the Offering Memorandum (2011);

(xii) copies of the rating letters from Fitch Ratings, Moody's Investors Service and Standard & Poor's Ratings Services with respect to the Notes;

(xiii) a transcript of all proceedings relating to the execution and delivery of the Issuing and Paying Agent Agreement, the Reimbursement Agreements, the Letters of Credit and this Dealer Agreement; and

(xiv) copies of such other documents, certificates and opinions as the Dealer shall have reasonably requested.

Section 5. Term and Termination of Dealer Agreement.

(a) This Dealer Agreement shall become effective upon execution by the Dealer and the Issuer, and may be terminated by the Dealer or the Issuer at any time on the earlier to occur of (i) 60 days after written notice of such termination is given by the party terminating this Dealer Agreement, or (ii) the date upon which a replacement dealer is appointed by the Issuer and such replacement dealer has accepted such appointment. The Dealer or the Issuer, as applicable, shall give written notice of its intent to terminate this Dealer Agreement, to the Dealer, the Issuer, the Banks and the Issuing and Paying Agent. The Issuer will use its best efforts to notify Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business ("**S&P**"), and Moody's Investors Service ("**Moody's**") of the termination of this Dealer Agreement and any change in the dealer for the Notes.

(b) In addition, the Dealer may terminate its obligations under this Dealer Agreement or, at its option, may temporarily suspend its obligations hereunder, at any time by notifying the Issuer in writing or by telegram, telex or other electronic communication of their election to do so if:

(i) legislation shall be favorably reported by a committee of the House of Representatives or the Senate of the Congress of the United States or be introduced by committee by amendment or otherwise in, or be enacted by, the House of Representatives or the Senate or be recommended by the President of the United States to the Congress of the United States for passage by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States, or the Tax Court of the United States, shall be rendered or a ruling, regulation or order of the Treasury Department of the United States or the Internal Revenue Service or any other governmental entity having jurisdiction over the subject matter shall be made or proposed having the purpose or effect of imposing federal income taxation or any other event shall have occurred which results in the imposition of federal income taxation, upon interest received on the Series A-1 Notes, the Series A-2 Notes and/or the Series B Notes;

(ii) legislation shall be favorably reported by a committee of the House of Representatives or the Senate of the Congress of the United States, or shall be introduced by committee by amendment or otherwise, or be introduced by the House of Representatives or the Senate or shall be recommended by the President of the United States to the Congress of the United States for passage by the Congress of the United States, or a decision by a court of the United States shall be rendered, or a stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter should be made or proposed, to the effect that the offering or sale of obligations of the character of the Notes, as contemplated hereby, is or would be in violation of any provision of the Securities Act of 1933, as amended (the "**Securities Act**") and as then in

effect, or the Securities Act of 1934, as amended and as then in effect, or that the Master Trust Agreement or the Issuing and Paying Agent Agreement shall be required to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect, or with the purpose or effect of otherwise prohibiting the offering for sale of obligations of the character of the Notes, or the Notes as contemplated hereby, without registration under the Securities Act or qualification of the Master Trust Agreement or the Issuing and Paying Agent Agreement under the Trust Indenture Act of 1939, as amended;

(iii) any information shall have become known which, in the Dealer's reasonable opinion, makes untrue any statement of a material fact contained in the Memorandum prepared as provided in Section 3 hereof, or causes the Memorandum prepared as provided in Section 3 hereof, as so supplemented or amended, to contain any untrue statement of a material fact or to omit to state a material fact necessary to make the statements made therein, in the light of the circumstance under which they were made, not misleading; provided, however, the Dealer shall not terminate its obligations under this Dealer Agreement or temporarily suspend its obligations hereunder, if the Dealer is promptly provided with such applicable information from the Issuer or from such other parties and a Supplement is prepared, as provided in Section 3 hereof, so that the Memorandum, in the Dealer's reasonable opinion, does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made therein, in the light of the circumstance under which they were made, not misleading;

(iv) except as provided in (i) and (ii) above, any legislation, resolution, ordinance, rule or regulation shall be introduced in, or be enacted by, any federal governmental body, department or agency of the United States or the State of California, or a decision by any court of competent jurisdiction within the United States or the State of California shall be rendered which, in the Dealer's reasonable opinion, materially adversely affects the marketability of the Notes;

(v) additional material restrictions not in force as of the date hereof shall have been imposed upon trading in securities similar to the Notes by any governmental authority or by any national securities exchange which in the Dealer's reasonable opinion, materially adversely affects the marketability of the Notes;

(vi) any governmental authority shall impose, as to the Notes, or obligations of the character of the Notes, any material restrictions not now in force, or increase materially those now in force which, in the Dealer's reasonable opinion, materially adversely affects the marketability of the Notes;

(vii) a banking moratorium shall have been established by federal or New York authorities;

(viii) only with respect to the Series A-1a Notes, the Series A-1b Notes, the Series B-1 Notes and the Series C-1 Notes (the “**JPMorgan Covered Notes**”), the rating of the JPMorgan Covered Notes shall have been downgraded to a rating below “P-1” by Moody’s or “A-1” by S&P or such rating agencies shall withdraw any ratings they may have in effect with respect to the JPMorgan Covered Notes;

(ix) only with respect to the Series A-2a Notes, the Series A-2b Notes, the Series B-2 Notes and the Series C-2 Notes (the “**Bank of America Covered Notes**”), the rating of the Bank of America Covered Notes shall have been downgraded to a rating below “P-1” by Moody’s or “A-1” by S&P or such rating agencies shall withdraw any ratings they may have in effect with respect to the Bank of America Covered Notes;

(x) only with respect to the Series A-3a Notes, the Series A-3b Notes, the Series B-3 Notes and the Series C-3 Notes (the “**Wells Fargo Covered Notes**”), the rating of the Wells Fargo Covered Notes shall have been downgraded to a rating below “P-1” by Moody’s or “A-1” by S&P or such rating agencies shall withdraw any ratings they may have in effect with respect to the Wells Fargo Covered Notes;

(xi) only with respect to the Series A-4a Notes, the Series A-4b Notes and the Series B-4 Notes (the “**Citibank Covered Notes**”), the rating of the Citibank Covered Notes shall have been downgraded to a rating below “P-1” by Moody’s or “A-1” by S&P or such rating agencies shall withdraw any ratings they may have in effect with respect to the Citibank Covered Notes;

(xii) a war involving the United States shall have been declared, or any existing conflict involving the armed forces of the United States shall have escalated, or any other national emergency relating to the effective operation of government of the financial community shall have occurred, which, in the Dealer’s reasonable opinion, materially adversely affects the marketability of the Notes;

(xiii) any event, including, without limitation, the bankruptcy or default of any issuer of, or obligor on tax-exempt securities shall have occurred which, in the Dealer’s reasonable opinion, makes the marketing of the securities of the character of the Notes impossible over an extended period of time;

(xiv) the Master Trust Agreement or the Issuing and Paying Agent Agreement shall cease to be in full force and effect or shall have been amended, modified or supplemented in such a manner as to materially adversely affect the Dealer, the Owners, any of the Banks, the security for the Notes or the Issuer’s ability to perform its obligations under such agreements, except as otherwise agreed to by the Dealer pursuant to Section 8(f) hereof;

(xv) only with respect to the JPMorgan Covered Notes, the JPMorgan Reimbursement Agreement shall cease to be in full force and effect or shall have been amended, modified or supplemented in such a manner as to materially adversely affect the Dealer, the Owners, the security for the JPMorgan Covered Notes or the Issuer's ability to perform its obligations under such agreement, except as otherwise agreed to by the Dealer pursuant to Section 8(f) hereof;

(xvi) only with respect to the Bank of America Covered Notes, the Bank of America Reimbursement Agreement shall cease to be in full force and effect or shall have been amended, modified or supplemented in such a manner as to materially adversely affect the Dealer, the Owners, the security for the Bank of America Covered Notes or the Issuer's ability to perform its obligations under such agreement, except as otherwise agreed to by the Dealer pursuant to Section 8(f) hereof;

(xvii) only with respect to the Wells Fargo Covered Notes, the Wells Fargo Reimbursement Agreement shall cease to be in full force and effect or shall have been amended, modified or supplemented in such a manner as to materially adversely affect the Dealer, the Owners, the security for the Wells Fargo Covered Notes or the Issuer's ability to perform its obligations under such agreement, except as otherwise agreed to by the Dealer pursuant to Section 8(f) hereof;

(xviii) only with respect to the Citibank Covered Notes, the Citibank Reimbursement Agreement shall cease to be in full force and effect or shall have been amended, modified or supplemented in such a manner as to materially adversely affect the Dealer, the Owners, the security for the Citibank Covered Notes or the Issuer's ability to perform its obligations under such agreement, except as otherwise agreed to by the Dealer pursuant to Section 8(f) hereof;

(xix) an Event of Default under the Issuing and Paying Agent Agreement has occurred and is continuing; or

(xx) only with respect to the JPMorgan Covered Notes, an Event of Default under the JPMorgan Reimbursement Agreement has occurred and is continuing;

(xxi) only with respect to the Bank of America Covered Notes, an Event of Default under the Bank of America Reimbursement Agreement has occurred and is continuing;

(xxii) only with respect to the Wells Fargo Covered Notes, an Event of Default under the Wells Fargo Reimbursement Agreement has occurred and is continuing;

(xxiii) only with respect to the Citibank Covered Notes, an Event of Default under the Citibank Reimbursement Agreement has occurred and is continuing;

(xxiv) only with respect to the JPMorgan Covered Notes, a Stop Order under the JPMorgan Reimbursement Agreement has been issued and not rescinded;

(xxv) only with respect to the Bank of America Covered Notes, a Stop Order under the Bank of America Reimbursement Agreement has been issued and not rescinded;

(xxvi) only with respect to the Wells Fargo Covered Notes, a Stop Order under the Wells Fargo Reimbursement Agreement has been issued and not rescinded; or

(xxvii) only with respect to the Citibank Covered Notes, a Stop Order under the Citibank Reimbursement Agreement has been issued and not rescinded.

Section 6. Payment of Fees and Expenses.

(a) In consideration of the services to be performed by the Dealer under this Dealer Agreement, the Issuer agrees to pay to the Dealer a fee in the amount of the product of (i) 0.05% divided by 365 or 366, as appropriate, and (ii) the sum of the principal amounts of such Notes outstanding (for which the Dealer is acting as dealer) on each day during the billing period (to which reference is made in the next succeeding sentence). It is understood and agreed that (A) payment of such fee shall be made by the Issuer quarterly upon receipt of an invoice therefor from the Dealer, and (B) the obligation of the Issuer to pay such fee shall survive the termination or cancellation of this Dealer Agreement to the extent that such obligation related to Notes outstanding prior to such termination or cancellation.

(b) All reasonable expenses and costs of the Dealer in effecting the authorization, preparation, issuance, offering, delivery and sale of the Notes (including, without limitation, the expenses and costs of the Dealer's counsel, the preparation, printing, photocopying, execution and delivery of the Notes, the Offering Memorandum (2011), each Annual Offering Memorandum, each Supplement, the Reimbursement Agreements, the Issuing and Paying Agent Agreement, this Dealer Agreement and all other agreements and documents contemplated hereby and thereby, including amendments, modifications and supplements to any such agreements and documents at any time during the term of this Dealer Agreement) shall be paid or reimbursed by the Issuer, unless and to the extent that such expenses and costs are paid out of or reimbursed from the proceeds of the Notes.

Section 7. Dealing in Notes by the Dealer; No Obligation to Purchase Notes.

(a) The Dealer, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Notes, including, without limitation, any Notes offered and sold by the Dealer pursuant to this Dealer Agreement, and may join in any action which any Owner may be entitled to take with like effect as if it did not act in any capacity hereunder. The Dealer, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the City and may act as depository, account party, or agent for any committee or body of owners of the Notes or other obligations of the City as freely as if it did not act in any capacity hereunder.

(b) Nothing in this Dealer Agreement shall be deemed to constitute the Dealer an underwriter of the Notes or to obligate the Dealer to purchase any Notes for its own account at any time.

Section 8. Miscellaneous.

(a) All notices, demands and formal actions under this Dealer Agreement shall be in writing and mailed, facsimiled, telegraphed or delivered to:

the Dealer: Morgan Stanley & Co. Incorporated
1221 Avenue of the Americas, 30th Floor
New York, New York 10020
Attention: Municipal Short Term Products
Telephone No.: (212) 762-8263
Facsimile: (212) 507-1937
e-mail: muni-short-term@morganstanley.com

the Issuer: City of San José, California
200 East Santa Clara Street
San José, California 95113
Attention: Debt Management
Telephone: (408) 535-7010
Facsimile: (408) 292-6482

the Issuing and
Paying Agent: Deutsche Bank Trust Company Americas
27th Floor
60 Wall Street
New York, New York 10005
Telephone: (212) 250-7848
Facsimile: (212) 797-8618
Attention: Trust and Securities Services

provided, however, that all notices pursuant to, or contemplated by, the provisions of Section 1 hereof shall be given by telephonic communication between or among authorized representatives of the parties to this Dealer Agreement and shall be confirmed in writing and mailed, telegraphed or delivered to such parties on the later of the Business Day following the settlement, if any, of the respective transactions to which such notices relate or the Business Day following the telephonic communication. The Dealer and the Issuer may, by notice given under this Dealer Agreement, designate other addresses to which subsequent notices, requests, reports or other communications shall be directed.

(b) Any certificate authorized by the Issuer, signed by any authorized official or officials of the Issuer and delivered to the Dealer shall be deemed a representation by the Issuer to the Dealer as to the statements made therein.

(c) This Dealer Agreement will inure to the benefit of and be binding upon the Issuer and the Dealer and their respective successors and assigns, and will not confer any rights upon any other person, partnership, association or corporation. The term “successors” and “assigns” shall not include any purchaser of any of the Notes merely because of such purchase.

(d) All of the representations, warranties and covenants of the Issuer and the Dealer in this Dealer Agreement shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of the Dealer; or (ii) delivery of and any payment for any Notes hereunder.

(e) This Dealer Agreement and each provision hereof may be amended, changed, waived, discharged or terminated only by an instrument in writing signed by the parties hereto.

(f) All proposed amendments, modifications or supplements to the Master Trust Agreement, the Issuing and Paying Agent Agreement or the Reimbursement Agreements requiring the consent of the Dealer pursuant to Sections 5(b)(xiv) through 5(b)(xviii) hereof, shall be provided to the Dealer in a timely manner for its review and comment. In the event the Dealer fails to respond to any such proposed amendments, modifications or supplements within ten (10) Business Days of its receipt of such proposed amendments, modifications or supplements, the Dealer shall be deemed to have agreed to such proposed amendments, modifications or supplements. Copies of all signed and executed amendments, modifications or supplements to the Master Trust Agreement, the Issuing and Paying Agent Agreement or the Reimbursement Agreements shall be provided to the Dealer.

(g) Section headings have been inserted in this Dealer Agreement as a matter of convenience of reference only, and it is agreed that such section headings are not a part of this Dealer Agreement and will not be used in the interpretation of any provisions of this Dealer Agreement.

(h) If any provision of this Dealer Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provisions of any constitution, statute, rule of public policy, or any other reason, such circumstances shall not have the effect of rendering the provision in question invalid, inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions of this Dealer Agreement invalid, inoperative or unenforceable to any extent whatever.

(i) Nothing herein shall be construed to make any party an employee of the other or to establish any fiduciary relationship between the parties except as expressly provided herein.

(j) This Dealer Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which constitute one and the same document.

(k) This Dealer Agreement shall be governed by and construed in accordance with the laws of the State of California.

[End of Third Amended and Restated Dealer Agreement]

MORGAN STANLEY & CO. INCORPORATED.,
as Dealer

By _____
Name: _____
Title: _____

CITY OF SAN JOSE

By _____
Julia H. Cooper
Assistant Director of Finance

Approved as to Form:

RICHARD DOYLE, CITY ATTORNEY

By _____
Danielle Kenealey
Chief Deputy City Attorney

[Signature page to Third Amended and Restated Dealer Agreement]

Council Agenda: 1-11-11

Item No.: 3.2 (b)

DRAFT--Contact the Office of the City Clerk at (408)535-1260 or CityClerk@sanjoseca.gov for final document.